

**BOROUGH OF DUMONT  
BERGEN COUNTY, N.J.  
ETHICS BOARD  
MARCH 15, 2012 MINUTES**

Flag Salute

**SUNSHINE LAW:** The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time, and place of this regular meeting in the annual schedule and notice of regular meetings of the Ethics Board. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to **The Record** and the **Ridgewood News**, posted on the Borough website and filed with the Borough of Dumont on November 21, 2011.

**ROLL CALL:** Adriann Green, John McKenna, Ted Pomeroy: present, Thomas Reagan: absent.

Also in attendance at the meeting were Anne Marie Rizzuto, Ethics Board Attorney, and Kathy Schaefer, Board Secretary.

Mr. Matthew Hayes, Council Liaison to the Ethics Board, was introduced to the Board members.

Copies of the minutes of the January 19, 2012 meeting were sent to all Board members prior to the meeting.

Motion to approve the Minutes of January 19, 2012: Mr. McKenna

Second: Mr. Pomeroy

All in favor: Aye

Copies of Statement for Legal Services Rendered dated January 24, 2012 submitted by Ms. Rizzuto were sent to all Board members prior to the meeting.

Motion to approve Statement for Legal Services Rendered for payment: Mr. McKenna

Second: Mr. Pomeroy

All in favor: Aye

Other Business:

The Board Secretary reminded the members of the Board that the 2012 Financial Disclosures were due on March 30, 2012.

It was suggested by the Board Attorney that the Board purchase copies of a new publication from the New Jersey State League of Municipalities "2012 Local Government Ethics Law". Ms. Rizzuto had already ordered a copy for herself. It was agreed by the members of the Board that if the publication was a pamphlet, copies could be made of it. If the publication is an actual book, nine copies (six for members, one each for liaison and secretary and one extra copy) may be purchased, the cost of which is \$108.00.

There was a brief recess at which no public business was discussed and the Board is now reconvening in an open public meeting setting. Ms. Rizzuto asked the Board secretary to take a roll call vote.

Roll call vote: Adriann Green, John McKenna, Ted Pomeroy, Thomas Reagan: present. Council Liaison Matthew Hayes is also present.

Motion to open the meeting to the public: Ms. Green  
Second: Mr. McKenna  
All in favor: Aye

Mr. Richard McLaughlin, 358 Prospect Avenue, stated that he had submitted his complaint but not sure how this is going to be handled. He stated that we are all guided by what he thinks as a moral compass, we all have a sense of what is right and what is wrong. He thinks and wonders if the Board would agree with him that our elected officials should be held to a higher standard than the rest of us. Would anyone agree with that? Ms. Rizzuto stated that this is not a discussion period, this is open to the public. The matter of the complaint being received is on for discussion of the Board after the public session. Mr. McLaughlin stated that after all the events after the last election and the reorganization meeting and so forth, he has a question as to whether there was a violation of the Code of Ethics. He stated that he did not know, he is not an expert in this area but he is asking the question and he would like an answer to that whether the Board agrees or thinks that maybe there was a violation. He thinks that the ball is in the Board's court right now, for you to figure out whether there was a violation or not. He stated he doesn't know, he can't judge it, he has certain feelings about it and that is his position. He would like to see the Board debate it and figure it out whether or not it is a violation of the Dumont Code of Ethics. He stated that he has been in Dumont about 21 years, five years ago he had started going to some political meetings and got a little bit involved and he is with the Democratic Club in Dumont. He hopes he is here as a private citizen, he doesn't know whether you can detach yourself from either but he really is a taxpayer and citizen of Dumont. Quite frankly what drove him to do this is the night that Ken Freeman spoke on January 3<sup>rd</sup> and that he (McLaughlin) was shocked about it and quite frankly found it a bit offensive. His (Freeman) feelings about when happened to him and how he got pushed by this lawsuit being dangled over him to do certain things and vote a certain way and so forth. So this is pretty much why he (McLaughlin) did it, why he wrote it up and he would appreciate the Board's consideration. He asked if the Board had any questions for him, Ms. Rizzuto advised it was not an appropriate time.

Ms. Rizzuto stated that if he was done, the Board would move on with its agenda.  
Mr. Reagan thanked Mr. McLaughlin for coming and his concerns.

Mr. Reagan asked for a motion to close to the public: Ms. Green  
Second: Mr. McKenna  
All in favor: Aye

Ms. Rizzuto stated she is prepared to lead a discussion on Item #6 on the agenda. Ms. Rizzuto stated that she wanted to start off first with the parameters, with some basic things she has already indicated to the Board and she is going to reiterate. One is yes that we have received a

complaint by Mr. McLaughlin, a private citizen who resides in Dumont, and we are going to discuss tonight the procedures for handling the complaint as we go forward. She is talking about generalities that will apply to this complaint as well as future complaints that may be received by the Board so therefore, there is no need for confidentiality under either the Open Public Meetings Act or our own Code of Ethics, which does require confidentiality during investigatory techniques that may come forward. She stated that her direction initially is that this is an open public meeting and that we are going to speak on generalities. We can go into a closed session at which only the board members, herself and the board secretary are allowed to be present where we can specifically talk about an investigatory matter under both the Open Public Meetings Act and our board code which requires that we preserve confidentiality while matters are being investigated. The Open Public Meeting Act allows an official board to go into closed session when matters are under investigation. We are on the same page, the state law and our local law with respect to that. She cautioned the Board that as we proceed on the discussion tonight about procedures that we should not be talking about any of the specifics of the complaint itself. If the Board wants to entertain a brief discussion about the specifics of the complaint itself, we can go into a closed session after we are done with this part of it.

The second initial thing that she wants to remind everyone is that there should be no email discussions among the board members about this matter or any matter that is subject to the Open Public Meetings Act law or confidentiality requirements. She prefers and cautions the Board that an open public meeting occurs in any place where two or more board members are discussing matters that are official business. That's the basic thing, no back door meetings, so she has always taken a very conservative approach that if there starts being email discussions back and forth among board members, that's a problem if its official government business. No emails, no commentary with newspapers, she prefers that complaints that are going to be investigated by this Board stay out of the public forum of newspaper or any other media outlets, whether it is Twitter, Facebook, anything that this world faces nowadays. With that being said, we have our council liaison here and we are very happy to have Councilman Hayes present and to refresh your memory, every year we have had a council liaison here. The purpose of the council liaison is to be advisory to the Board, he is not a voting member of the Board nor is he allowed to attend close sessions. In addition, his job as a liaison is to report back briefly to Council, here's what each of his assignments is doing and he gives them a brief blurb of what's going on here. Of course if the Board has any issues which they wish to bring to the Council's attention, he's our first mode of communication. That being said, we discussed at our January 19<sup>th</sup> meeting that we are short two board members and that this has an impact on how the investigatory process occurs with our Board. We currently have four members, the ordinance calls for six members, that's the full Board. As advised by the board secretary, the Council has considered and tabled appointments, nominations and there is a Council meeting next Tuesday, March 20<sup>th</sup>, and it is possible that another Ethics Board member may be appointed. On behalf of the Board and at their direction, Ms. Rizzuto, back in January had sent a memo to the Council; she assumed that it got to the Council members urging the Council to appoint our membership. It will become clear on my discussion later on in the meeting on procedure that certain votes that we do in an investigatory process have to be two-thirds of members and that impacts the position the four members are put in when we don't have a full membership. The conservative approach is that we would prefer as soon as possible the two members appointed. At least one member appointed would certainly be much appreciated and she is certain that Mr. McLaughlin and the

complaint that he has filed, the appropriate thing is to attempt to address it as reasonably as possible, and reasonable means also a time element as well. Memories fail and witnesses if they are called have time against them, so time is an important issue in affording the proper hearing.

Ms. Rizzuto stated that her discussion for tonight is going to be about the procedure and she has done quite a bit of research as well as consultation with various people that she needs to talk to about. As you know, she has said this before, there are not a lot of ethics boards serving municipalities in the State of New Jersey. Each county has an ethics board and of course, there is a State Ethics Board that deals with government employees or government officials. There is a plethora of law on ethics mainly dealing with attorneys and there's plenty of ethics boards all over the place that deal with attorneys, deal with doctors, chiropractors, dentists, so Dumont is one, she doesn't know the actual count, but Dumont was ahead of the curve when the board was adopted initially and as I have been serving the last two or three years, she knows certainly there isn't a lot of guidance. However, our ordinance follows along with the state law, which is called the Local Government Ethics Law, and our ordinance follows along in general with it. In addition, there is something called the Administrative Procedures Act which assists her in determining and giving you direction on how things should go and that is really what we are talking about now.

So she sort of laid out a seven-point procedure here and it is really short. This is the order of business. You have received a complaint, the first thing that we need to do is to determine whether we have jurisdiction and for that we need under our ordinance two-thirds of the membership. We will get back to the two-thirds of the membership vote a little bit later. But the first order of business is to determine jurisdiction. To that you look to the four corners of the complaint and to that you look to our Code of Ethics which is Resolution 07-01. She stated she should back up a little. We received a complaint and by certified mail, we acknowledged receipt of the complaint within the time that we needed to do that. That is done by the board secretary. Each of the members had received the complaint and it is confidential, not to be distributed to any other person or discussed. Our Council Liaison has a copy of the complaint, again with the confidentiality requirement that we have.

After determining jurisdiction, we then are charged under our Code with notifying the respondent. The respondent is the person or persons named in the complaint who are to answer to the complaint. So that has not occurred yet but the named party in our complaint, once we have determined if we have jurisdiction, then they will be notified. The notification will consist of giving a copy of the complaint as well, indicating that there is a preservation of confidentiality throughout the proceedings and asking if they, and they have a time period for whether they would like to make any submission to the Board. So notifying the respondent is the second order of business.

The third order of business is to receive a submission from the respondent if he or she chooses to do that.

The fourth order of business is to begin our investigation which includes the gathering of documentary evidence, issuing of subpoenas if necessary and having whatever preliminary discussions which need to be done with the Board, not necessarily with the filer, not necessary

with the respondent, but an investigation conducted independently and objectively by the Board. When we get to that proceeding and indeed as to notifying the respondent part of it and receiving the submission from the respondent, those will be talked about in general terms, no names, confidentiality preserved. When we have discussion of documentary evidence, issuing of subpoenas, etc., that will be in a closed session, here in this room with the four of you present. That is the fourth part of the order of business.

The fifth element is a determination of reasonable probability, that is the language from our code, that an ethics infraction has occurred. So that is very similar to what in criminal law is called probable cause, in other words a law enforcement officer cannot come up to you and tell you to show him what's in your pocket. They have to have a reasonable belief that there is a crime or offense being committed. That is very similar to what we have to do, it is not determining the ultimate determination, but just establishing do we have a reasonable probability that something happened here that's a violation of the code. That is a two-thirds vote of the membership which again, would be done in a closed session and not necessarily, she is not ruling out participation of parties, either the responding person or the filer at that point, they may very well be participating at that point, she hasn't made that decision.

After that, once the vote occurs, we then go into the hearings phase and the hearings phase is where we will hear testimony from people if we need to hear testimony. People are brought here by the issuance of subpoenas. Subpoenas are an official process, they are done in the name of the Board, prepared by herself with the assistance of the board secretary, signed by herself (Rizzuto) as an officer of the court, in this case as an officer of this Board, issued officially to people compelling them, please come to this meeting, we have subpoena authority, we are going to have a hearing and we want to take your testimony. They are compelled to come. If they do not present, they are in violation of a properly issued subpoena. They also have the ability to run to court and quash the subpoena should they choose to do that. That is the sixth order of business is having official hearings, where the filing party will have the opportunity to present evidence and witnesses; where the Board will have ability to look at evidence and witnesses and call witnesses by subpoena and where the responding person or persons has the ability to present evidence and testimony and witnesses. That again, will be in a closed forum.

The last order of business is the decision making process whether or not this Board after considering all the submissions and all that they have been advised and learned about and heard by witnesses, whether or not an ethical infraction has occurred and that decision has to be by two-thirds of the full membership of this Board, which is different than other two-thirds. That being said, let's just take a break at this minute and ask if any of you have questions about the order in which we are going to proceed.

Mr. Reagan asked if the last phase needs two-thirds of full membership, how do we start without full membership. Ms. Rizzuto stated that's a very good point and let's talk about the difference between the two earlier votes and the last vote and she has done some research and consultation on this point as well. First of all, the Board is authorized for six members, two-thirds of the full membership is four people. So four people would have to agree on the final decision. With respect to two-thirds of the membership in determining jurisdiction or reasonable probability, it is her opinion that we currently have four members and we would need three to have a decision

made. If it is two-two, the decision is automatically considered under Roberts Rules of Order because this is discussed, voting procedures are not discussed in here – but, in general, a tie vote on things like development applications, land use boards or on council adoption of ordinances, a tie vote means it is not adopted, a tie vote means a development application is denied, a tie vote in a decision of jurisdiction means we don't find jurisdiction. It's an automatic no. A tie vote in a determination of reasonable probability is no – none exists. So you are out of the box with these four members if there is going to be a tie vote. On the last decision, we must have unanimity; I kept talking about that at the last meeting and then I looked at other laws; for example, in the municipal land use law, to grant a D variance which is called a use variance, a super majority vote is needed meaning in a D variance, there must be an affirmative vote of five members. It is either a seven board membership or a nine board membership. If it is a combined board, planning and zoning board together, that is the way Dumont has it – a combined Land Use Board, the law says two-thirds of the full authorized membership, so now she is looking at laws that have this super majority so that means full membership means two-thirds of six. When it just says membership, it means two-thirds currently, or two thirds of four. She has looked at other laws; bond ordinances that are adopted by municipalities, need two-thirds of the full membership of the governing body. So now we know ordinances can be adopted four to three or some councils have nine members so it could be adopted five to four but for a bond ordinance, it must be two-thirds of the full membership.

Ms. Rizzuto stated that she had looked at these other laws to give guidance here and to your point, what she is going to recommend to the Board and Council Liaison again, this has to do with budgetary matters. First of all, we will need a certified court reporter as we go forward. That's important for the filing party, the responding party, this Board and you members. If you happen to miss a meeting, this could go on for three or four years, you need a certified court hand reporter, this is an official hearing; that's going to be an additional expense of this board that we have never incurred before. As you are aware, our budget is \$3,000, we rarely have hit that in the last four years of existence but in this year, we are going to, if this thing continues on, and we will need a court hand reporter. We could go through the whole process without five or six members and they could still participate if they had certified reporting transcript.

She strongly does not recommend that we proceed at this time with official hearings on this or begin the process of notifying the respondent, determining jurisdiction, etc. She feels that the conservative approach is to have our Board get a fifth member and hopefully a sixth member. She is strongly urging this Board to table the continuance of this matter until we see if we get a council appointment in March, March 20<sup>th</sup> which is next Tuesday. Our next meeting is not until May 17<sup>th</sup> and we do have the ability to table things to a certain extent but her suggestion would be, assuming that we have a fifth member, that we have a special meeting to continue to address this in April. We will take an official vote when we are done; she has some other matters to discuss. Mr. Chairman, I would suggest that we table the matter until we see the results of the Council meeting and if we have a new member, then each one of you can communicate with the Board's secretary for a date in April, that we will then have an initial discussion. The initial discussion will be discussing the jurisdictional issue, that will be the first thing that we will discuss and she has prepared for that as well. In addition to a certified court reporter, you see my first bill was approved and it is already a third of our budget. Since January, we had February/ March and now we will have April/May. It is clear to her and it would be unfair not to advise

right now that we are going to exceed the budget even on legal fees. That is a consideration that we should know. In addition we are going to have subpoenas issued and that cost money to serve subpoenas appropriately. The subpoenas are normally issued and served by personal service handing the subpoena to a person and you usually hire a service that does that or a constable or something of that nature. It seems clear to her that the Council should be considering adding to the budget for this year and it may be that we do not need it in the end; it may be that we do not find jurisdiction at the very first step and then we won't use the budget. It may also be that we have to proceed further and then we will go from there. Mr. Reagan asked if that is something we can just give to our Council Liaison or do we have to send a letter to the Mayor and Council, how to we proceed with it, just on the budget side. Ms. Rizzuto asked Council Liaison what he would suggest. The best idea Councilman Hayes advised that Ms. Rizzuto write down what she thinks we will need, submit it to him, who will in turn submit it when they do the budget or he can submit it when he does the report on the Committee. You can send a copy to him and you can send a copy directly to the Mayor. This way he has it as Liaison and the Mayor will also see a copy. Ms. Rizzuto stated that she will prepare a memo for the Board and lay out the expected expenditures. She will need to see about a court hand reporter and get an idea of costs of subpoenas, etc.

Councilman Hayes stated that he has a couple of questions. He asked Ms. Rizzuto if she said that at the closed meetings, the liaison is not included in that; she said no. Councilman Hayes stated just so he is clear, you stated that as far as the extension of the budget, that only happens if you accept the case and start the procedure. Ms. Rizzuto stated that we may or may not go over by the time we reach jurisdictional issue, most likely we will not go over. If we do determine there is jurisdiction, we certainly will go over. Ms. Rizzuto stated that she would lay that out in her memo. Councilman Hayes stated that he thought Mr. McLaughlin wasn't really sure, that he was just asking the question and he thinks he was trying to get a determination tonight before it goes on. Ms. Rizzuto stated that during the public session, Mr. McLaughlin made a statement and hearing his statement is good but she is advising you based upon our obligation, whether he wants to or not, we have a complaint now before us so we have to follow the procedure. So yes, we are going to do the determination of jurisdiction, that is what he wants to know and that is the first thing we have to do. Ms. Rizzuto stated that we may not hit the budget with that, but after that, if we go on with these hearings, they can be quite expensive. So basically, Councilman Hayes stated addressing the Board members, you go over the complaint and see if you see if there is any justification for it to proceed, correct? Ms. Rizzuto advised yes, by an interpretation of what our code indicates. Ms. Rizzuto stated to make sure Councilman Hayes is aware, the board secretary should have provided you with our governing documents. Councilman Hayes stated that she did. Ms. Rizzuto stated that they are Chapter 31 of the Code and two resolutions, the most important one being Resolution 07-01. She stated 07-01 lays out what we can do, when jurisdiction is, and then we look to the four corners of the complaint to see if it meets with those things. Councilman Hayes asked when does this become public knowledge, after tonight, I guess, because this is an open public meeting. Ms. Rizzuto stated no, absolutely not. A complaint has been filed, that's all that we can state. Councilman Hayes advised that he is going to be asked that when he tells the Council we may need more money. Councilman Hayes stated that when asked, he can state that a complaint has been filed, no more than that. Ms. Rizzuto stated absolutely and to be clear the existence of the complaint, the filing of a complaint is in the open public forum. The content of the complaint, the person named, the things that are attached,

whatever witnesses might be, none of that will be disclosed in any fashion and frankly, it appears that it will never be disclosed in any fashion at all. At the end of the decision-making process, if we were to go through a whole complaint, hearings, witnesses and issue a decision, it cannot be made public unless the responding party agrees.

Ms. Rizzuto stated that if we are clear on where we are going with this, she just wanted to briefly touch on the processes that we can do. It is not just a complaint investigation that we can do, we can also determine a lesser function of this Board which would be to issue an advisory opinion. She urges the Board members to go back and read over Resolution 07-01 because we also have the authority to send it up to the County Prosecutor or the Attorney General if we think there is criminal activity, we can render an advisory position and we can have a whole full complaint investigation. It may be that this ends in a general advisory opinion and that is where we are at.

Ms. Rizzuto stated that she has nothing at present to discuss unless the Board would like to go into a closed session with respect to any specifics of this complaint. Mr. Pomeroy asked that on the issue of jurisdiction, what is the best way to get that done, closed or open? Ms. Rizzuto stated during closed session.

Mr. Pomeroy made a motion to go into closed session.

Second: Ms. Green

All in favor: Aye

Ms. Rizzuto stated that the Board would like to go into closed session for an investigatory matter. We have no other business to conduct after this; we will not have a decision that we will make public. We will re-open to the public as is required by law but we have nothing further. If Mr. McLaughlin and Councilman Hayes want to leave, they are free to leave. Ms. Green asked that before Councilman Hayes leaves, is there anything that he should talk to us about the Council. Ms. Rizzuto stated he has his suggestion that we need a new member and Ms. Rizzuto is to send a memo on the budget and you will get that and the Council will get that. Ms. Green stated she wanted to know if he had anything from the Council to report to the Board.

Motion to open the meeting to the public: Mr. Reagan

Second: Mr. Pomeroy

All in favor: Aye

Motion to adjourn: Mr. Pomeroy

Second: Ms. Green

All in favor: Aye

A special meeting of the Ethics Board is tentatively scheduled for April 26, 2012. The next regularly scheduled meeting is May 17, 2012.

Minutes respectfully submitted by

Kathy Schaefer  
Ethics Board Secretary